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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/914,205	06/30/2003	Charles D. Y. Sia	1038-1176 MIS:JB	1791

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EXAMINER

WEHBE, ANNE MARIE SABRINA

ART UNIT	PAPER NUMBER
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1633

DATE MAILED: 08/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

09/914,205

**Applicant(s)**

SIA ET AL

**Examiner**

Anne Marie S. Wehbe

**Art Unit**

1633

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 02 June 2005.  
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 16 and 18 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 16 is/are rejected.  
7) ☒ Claim(s) 18 is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.  
5) ☐ Notice of Informal Patent Application (PTO-152)  
6) ☐ Other: \_\_\_\_\_.

### **DETAILED ACTION**

Applicant's amendment and response received on 6/2/05. Claims 1-15, 17, and 19 have been canceled. Claims 16 and 18 are currently pending in the instant application. An action on the merits follows.

Those sections of Title 35, US code, not included in this action can be found in the previous office action.

#### ***Priority***

Applicant's amendment to the specification, which updates the priority information has been entered. Benefit of priority to U.S. application 09/256,194, filed February 24, 1999, is acknowledged.

#### ***Specification***

The objection to the disclosure because of informalities with the brief description of Figure 2 is withdrawn in view of applicant's amendment to the specification on page 3.

#### ***Claim Rejections - 35 USC § 102***

The rejection of claims 16-17 under 35 U.S.C. 102(b) as being anticipated by WO 93/18055 (September 1993), hereafter referred to as Berzofsky et al., is withdrawn in view of

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applicant's cancellation of claim 17 and the amendment to claim 16 which deletes the recitation of SEQ ID NO:3.

The rejection of claims 16-18 under 35 U.S.C. 102(b) as being anticipated by Verrier et al. (August, 1997) PNAS, Vol. 94 (17), 9326-9331, is withdrawn in view of applicant's cancellation of claim 17 and the amendment to claim 16, which now recites a peptide "consisting of", rather than "having".

The rejection of claims 16-17 under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 5,976,541 (11/2/99), Berzofsky et al., hereafter referred to as the '541 patent, is withdrawn in view of applicant's cancellation of claim 17 and the amendment to claim 16 which deletes the recitation of SEQ ID NO:3.

The rejection of claim 16 under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,534,482 (2/18/03), hereafter referred to as Fikes et al., is withdrawn in view of applicant's amendment to claim 16 which deletes the recitation of SEQ ID NO:10.

Applicant's amendments to the claims have necessitated the following new grounds of rejection.

Claim 16 is newly rejected under 35 U.S.C. 102(e) as being anticipated by US 2002/0168374 (11/14/02), hereafter referred to as Kubo et al. The applicant claims a peptide

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consisting of an amino acid sequence selected from a group which includes SEQ ID NO: 6.

Kubo et al. teaches an isolated peptide consisting of the amino acid sequence of SEQ ID NO:6, which Kubo et al. identifies as SEQ ID NO: 79 (see page 13). Thus, by teaching the limitations of the claims as written, Kubo et al. anticipates the instant claim.

Claim 16 is newly rejected under 35 U.S.C. 102(b) as being anticipated by WO 97/34617 (9/25/97), hereafter referred to as Kubo et al. The applicant claims a peptide consisting of an amino acid sequence selected from a group which includes SEQ ID NO: 6. Kubo et al. teaches an isolated peptide consisting of the amino acid sequence of SEQ ID NO:6, which Kubo et al. identifies as SEQ ID NO: 79 (see page 39). Thus, by teaching the limitations of the claims as written, Kubo et al. anticipates the instant claim.

Claim 16 is newly rejected under 35 U.S.C. 102(e) as being anticipated by US 5,981,706 (11/9/99), hereafter referred to as Wallen et al. The applicant claims a peptide consisting of an amino acid sequence selected from a group which includes SEQ ID NO:12. Wallen et al. teaches an isolated peptide consisting of the amino acid sequence of SEQ ID NO:12, which Wallen et al. identifies as SEQ ID NO: 87 (see Figure 1D). Thus, by teaching the limitations of the claims as written, Wallen et al. anticipates the instant claim.

***Allowable Subject Matter***

Claim 18 is objected to as being dependent upon a rejected base claim.

No claims are allowed. However, the following subject matter is considered free of the prior art and allowable at this time:

**A peptide consisting of an amino acid sequence selected from the group consisting of SEQ ID NOS: 4-5, 7-9, 11, and 13-14.**

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication from the examiner should be directed to Anne Marie S. Wehbé, Ph.D., whose telephone number is (571) 272-0737. The examiner can be reached Monday- Friday from 10:30-7:00 EST. If the examiner is not available, the examiner's supervisor, Dave Nguyen, can be reached at (571) 272-0731. For all official communications,

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**the new technology center fax number is (571) 273-8300.** Please note that all official communications and responses sent by fax must be directed to the technology center fax number. For informal, non-official communications only, the examiner's direct fax number is (571) 273-0737.

Dr. A.M.S. Wehbé

**ANNE M. WEHBE' PH.D  
PRIMARY EXAMINER**

A handwritten signature in black ink, appearing to read 'All', with a long horizontal stroke extending to the right.